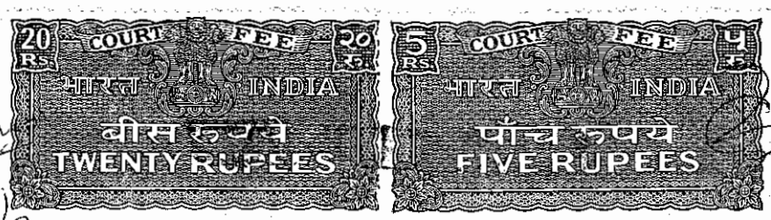

(3)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Writ Petition No. 1604 /1997

PETITIONER: Dwarikar Prasad Tripathi, s/o Shri Baleshwar Prasad, aged about 45 years, r/o Antahgarh, Tesil & Post Antahgarh, Distt. Bastar (M.P.

Versus

RESPONDENTS: 1. Zila Sahkari Kendriya Bank Maryadit, Jagdalpur.
2. Board of Revenue, M.P. Gwalior.

WRIT PETITIONER UNDER SECTION 226 & 227 CONSTITUTION OF INDIA.

... to submits as

APR

(121)

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No. 62 of 1997

Jila Sahakari Kendriya Bank Maryadit, Jagdalpur

Vs.

Dwarika Prasad Tripathi and others

W.P.No.1604/1997

Dwarika Prasad Tripathi

Vs.

Zila Sahkari Kendriya Bank Maryadit, Jagdalpur and another

JUDGMENT

Post for 25.09.2006

Sd/-
Sunil Kumar Sinha
Judge

AFR

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(122)

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No. 62 of 1997

Jila Sahakari Kendriya Bank Maryadit, Jagdalpur

Vs.

Dwarika Prasad Tripathi and others

W.P.No.1604/1997

Dwarika Prasad Tripathi

Vs.

Zila Sahkari Kendriya Bank Maryadit, Jagdalpur and another

Appearance:

Shri Prafull Bharat, counsel for the Employer Bank.

Shri Prashant Jayaswal, Sr. Advocate with Shri Vinay Kumar Pandey, counsel for the employee.

JUDGMENT
(25.09.2006)

SUNIL KUMAR SINHA, J.

(1) The employer Bank as well as the delinquent employee, both have challenged the legality of the order dated 04th of November 1996 passed by the Board of Revenue, M.P., Gwalior, in S.A.No.A/1-1/C/789/95. By the said order, while allowing the appeal of the delinquent employee, the Board has directed for his reinstatement with half back wages. The bank is aggrieved with the order of reversal in appeal, whereas, the delinquent employee is aggrieved with that part of the order by which only half back wages have been directed to be paid to him.

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(2) The brief facts are that while working as Manager, LAMPS Amabeda, the delinquent employee was served with charge sheet dated 03.2.1982 in relation to the following three charges :

> 1. आपने दिनांक 18–9–81 को मु0 500/– बैंक से स्टेशनरी क्रय हेतु आहरण कर लैम्प की राशि का दुरूपयोग किया ।
>
> 2. आपने दिनांक 3–10–81 को लैम्प आमाबेड़ा से सिलक राशि 1826.74 पैसा बैंक में जमा करने हेतु प्राप्त कर दिनांक 25–10–81 को मात्र 1350/– बैंक में जमा किए शेष राशि 476.74 पैसा बैंक में जमा न करके निजी उपयोग में लेकर संस्था के राशि का दुरूपयोग किये ।
>
> 3. आपने लैम्प बारसूर के कार्यकाल में श्री के0आर0 तिवारी विक्रेता से एक बोरा पतला चावल 220/– एक बोरा यूरीया खाद 121.25 एवं वेतन से 60/– नगद लिये थे जिसे कुल 401.25 पैसे संस्था में जमा न करके आपने राशि का दुरूपयोग किया है ।

An enquiry was conducted and the enquiring officer found all the three charges proved against the employee. Thereafter, on the basis of the aforesaid enquiry report, submitted to the competent authority, the competent authority awarded the punishment of dismissal on 26.4.1983.

(3) Being aggrieved with the aforesaid order of dismissal, the employee filed a dispute before the Deputy Registrar, Co-operative Societies u/s 55(2) of the M.P. Co-operative Societies Act, 1960 (hereinafter referred to as the Act). The Deputy Registrar, after taking written statement of the Bank, framed various issues in dispute including the following two important issues as issue no.2 and 3 :-

> "(2) क्या वादी के विरूद्ध प्रतिवादी बैंक के द्वारा सेवा संबंधी आरोप लगाये थे और ये आरोप क्या थे तथा आरोपों के बारे

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में जांच सेवा नियम के प्रावधानों के अनुसार विधिवत की गई ।

(3) क्या वादी की सेवाये प्रतिवादी बैंक द्वारा सेवा नियमों के विरूद्ध अवैधानिक रूप से समाप्त कर दी गई और क्या प्रतिवादी बैंक द्वारा इस संबंध में जारी आदेश वैध है ।"

(4) Thereafter, the parties were called upon to lead their evidence. Ultimately, the Deputy Registrar recorded 3 important findings i.e., *(i)* the departmental enquiry was conducted in accordance with the rules; *(ii)* the employee was given full opportunity to defend himself in the departmental enquiry and *(iii)* the charges were rightly proved against the employee. The dispute was dismissed vide order dated 25.3.1992. The employee preferred an appeal against the said order before the Joint Registrar and the said appeal was also dismissed by the appellate authority on 25.8.1995 and the order passed by the Deputy Registrar was confirmed. Against this order, passed by the appellate authority in first appeal, the employee preferred a second appeal u/s 77(2) of the aforesaid Act before the Board of Revenue, M.P., Gwalior. The Board allowed his appeal in part by setting aside the order passed by the Joint Registrar in First Appeal and directed for reinstatement of the employee with 50% back-wages. It is against this order, passed by the Board, the employer as well as the employee both have filed these writ petitions.

(5) Learned counsel, appearing for the petitioner Bank, in W.P.No.62/1997 argued that the jurisdiction vested with the second appellate authority was limited to sub-section (2) of

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section 77 and the Board could have entertained the second appeal on the said grounds only and if the Board has passed its order beyond the provisions of sub-section (2) of section 77, the same cannot be sustained. He next argued that the Board without assigning any reason has reversed the concurrent finding recorded by the two subordinate authorities.

(6) Per contra, learned counsel for the employee/petitioner in W.P.No.1604/1997 argued that there was a procedural defect in the conduction of enquiry as a proper charge sheet, showing the names of witnesses, list of documents relied on against the petitioner, was not served which vitiates the entire enquiry. Secondly, he contended that the charges levelled against the petitioner were not proved and thirdly his contention was that the supervisory jurisdiction vested with this Court under Article 227 of the Constitution is limited to only look into the errors in the decision making process and this court would not sit as an appellate authority over the judgment passed by the Board of Revenue in Second Appeal u/s 77 of the said Act. Lastly, his submission was that the order of reversal passed by Board of Revenue is just and proper, however, instead of awarding half back wages, the Board would have awarded full back wages to the petitioner.

(7) I have heard learned counsel for the parties at length and have also perused the records of the two writ petitions.

(8) So far as the arguments advanced on jurisdiction of the High Court under Article 226/227 of the Constitution of India are concerned, it has been held in the matter of ***B.C.Chaturvedi***

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-Vs- Union of India and others reported in (1995) 6 SCC 749 that the Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court or Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case.

(9) In ***R.S.Saini -vs- State of Punjab and others, (1999) 8 SCC 90***, it was again held by the Apex Court that the Court, while exercising the writ jurisdiction, will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings. It was observed by the Apex Court in the said judgment that a narration of charges and the reasons of the inquiring authority for accepting the charges,

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as seen from the records, shows that the inquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant. The Apex Court observed that these decisions were taken in a reasonable manner and objectively and the conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. The Apex Court observed that the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and no fault can be found out with the findings of the High Court in this regard.

Referring to these two decisions, the Apex Court again held in the matter of ***Lalit Popli –vs- Canara Bank and others, (2003) 3 SCC 583*** that while exercising jurisdiction under Article 226 of the Constitution, the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

(10) Again in the matter of ***Divisional Controller, KSRTC (NWKRTC) –vs- A.T. Mane (2005) 3 SCC 254,*** the Apex Court held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and Courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal.

(11) So far as Article 227 is concerned, the Apex Court while dealing with the matter relating to Rent Control Legislation held in ***Laxmikant Revchand Bhojwani and another –vs- Pratapsing Mohansingh Pardeshi,(deceased through his heirs and legal representatives), (1995) 6 SCC 576*** that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India in the said case as the said Act of rent legislation was a special legislation governing the landlord and tenant relationship and disputes. The Apex Court held that the legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

(12) In the present case, the enquiring officer found all the 3 charges proved against the employee and submitted his report to the competent authority. Thereafter, the competent authority passed the dismissal order dated 26.4.1983. The aforesaid order has been placed on record as Annexure P-3 in W.P.No.62/997. A perusal of the said order would show that the competent authority has gone into the entire evidence placed before the enquiring officer and he in an objective manner, placing reliance on the materials placed during the enquiry,

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confirmed the reasoned findings recorded by the enquiring officer. The impugned order of dismissal appears to be based on reasonable evidence on record and the conclusion concurrently arrived at by the enquiring authority and the competent authority cannot be faulted with. So far as Charge No.1 is concerned, the competent authority on the basis of the records of the bank, observed that for obtaining an advance of Rs.500/- no application was given by the employee and no sanction was obtained and the purchase was made without calling quotations etc., and to justify his action for taking the defence, he managed to get entered an ante-dated proposal in the minutes/resolution in the concerned book. The purchase bill, which was produced by him, was on the name of Adim Jati Seva Sahkari Samiti, Jagdalpur (not on the name of the concerned Samiti). No entry in the stock register regarding articles, so purchased, were made. In fact, the finding was recorded that the forged bill for sum of Rs.429/- was managed by the employee after making an ante-dated entry in the relevant book of resolution/minutes. This is the finding recorded on the basis of the documentary evidence. So far as charge no.2 is concerned, on evidence it was established that the employee had received an amount of Rs.1,826.74 P on 03.10.1981 which was to be deposited in the Bank. However, only Rs.1350/- was deposited by him on 05.10.1981 and in this manner he deposited less amount of Rs.476.74 and no proper explanation was given by him. This finding is also based on documentary evidence produced before the enquiring officer. Likewise, the 3rd Charge regarding receiving one bag of rice and some amount from the salesman

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Kripa Ram has also been held to be proved on the basis of the evidence adduced before the enquiring officer. A perusal of this order would also show that a reasonable opportunity of hearing was given to the employee and he was also given opportunity to inspect the records as desired by him. This all goes to show that the finding recorded in the domestic enquiry was based on relevant evidence on record and the enquiry was conducted in an usual manner after giving a proper opportunity of hearing to the employee. Since the employee was dissatisfied with this order passed by the Competent Authority, as stated above, he filed a dispute u/s 55(2) of the said Act and in that dispute also, two important issues (supra), pertaining to the grounds raised, were framed and thereafter, the Deputy Registrar recorded the finding against these two issues in terms that the departmental enquiry was conducted in accordance with the Rules and the employee was given full opportunity to defend himself in the departmental enquiry and the charges were rightly proved against the employee. On first appeal, the appellate authority also confirmed the order passed by the Deputy Registrar, against which, a second appeal u/s 77(2) of the Act was filed and in the said second appeal, the orders were set aside. Section 77(2) of the Act reads as under:

> 77. **Appeals.-**
>
> (1) xxx xxx xxx
>
> (2) A second appeal shall lie against any order passed in first appeal by the Registrar, Additional Registrar or Joint Registrar, to the State Government on any of the following grounds and no other, namely:-
>
> (i) that the order is contrary to law; or

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(ii) that the order has failed to determine some material issue of law; or

(iii) that there has been a substantial error or defect in the procedure as prescribed by this Act which may have produced error or defect in the decision of the case upon merits.

A perusal of this sub-section would show that a second appeal would lie against any order passed in First Appeal if either of the said 3 grounds were available to the appellant. The placement of the words like "and no other" in the main provision of sub-section (2) clearly shows the intention of the legislature that in a very limited scope, the matter has to be dealt with by the second appellate authority and while entertaining such second appeals, the authority must advert to the said limited grounds and the order must show as to which of the grounds were found to be existing on which the order passed in first appeal has to be reversed or set aside. So far as the writ jurisdiction under article 227 is concerned, as has been held by the Apex Court in Lakshmikant Revchand Bhojwani's case (supra) normally in such situation, the High Court would not be justified in extending its jurisdiction under Article 227 as the object is to give finality to the decisions of the second appellate authority, but when the order falls in the category of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, the matter can be considered. A perusal of the impugned order would show that the second appellate authority (Board), vide para 5 of the impugned order, leaving apart permissible grounds for entertaining a second appeal, reversed the order

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without assigning any reason for the same and simply saying that "It was a case that some advance was taken by the employee out of which he has submitted the account for some amount and the rest of the amount was paid by him in the Bank and the embezzlement was not proved". How this reversing finding has been recorded ? No reasons have been assigned for recording such a reversing finding. It has also taken a ground that Bank has written a letter for depositing Rs.1270.74 and on the letter of the Bank, the aforesaid amount which was the outstanding amount was deposited by the employee, therefore, it was incumbent upon the Bank to reinstate the employee in service. I am constrained to say that this is all strange to the provisions of sub-section (2) of section 77 of the Act as none of the grounds provided under this sub-section were determined to be present in this case and a reversing order has been passed without recording any reason against the finding arrived at in the domestic enquiry and also by the domestic tribunal and the first appellate tribunal under the provisions of the aforesaid Act. In the opinion of this Court, the order passed by the second appellate authority is totally against the provisions of section 77(2) of the said Act as none of the grounds provided in this sub-section were available and the order was passed in grave dereliction of the duty and the same can be corrected under Article 227 of the Constitution so as to prevent the grave injustice and I hold it accordingly.

(13) The next point raised by learned senior counsel for the employee/ petitioner in W.P.No.1604/1997 relates to procedural defect in conduction of enquiry as according to him, a proper

charge sheet showing the names of witnesses, list of documents relied on etc., etc., were not served upon the petitioner, vitiating the entire enquiry. Admittedly, this enquiry was conducted under the Rules framed u/s 55 of the aforesaid Act, which came into force on 01.4.1977. Chapter II of the Rules provides for disciplinary action. Rule 45(1) describes expression "major misconduct". Rule 46(1) provides that an employee found guilty of major misconduct may be awarded any of the punishment mentioned there-under apart from the recovery of actual loss or damage caused by him to the Bank or the customers. Clause (d) of sub-rule (1) of rule 46 provides for dismissal, or removal or discharge as one of the punishments for major misconduct. Rule 47(2) provides for manner of the enquiry to be conducted. Clause (a) of this sub-rule provides that the competent authority or the other officer authorized by him in this behalf shall give to the employee a charge sheet in form (C) for the major misconduct and in form (D) for minor misconduct clearly setting forth the misconduct charged and the circumstances appearing against him and requiring his explanations. Form "C" is also appended to the Rules. In this form, nothing is there like mentioning the names of the witnesses, list of documents relied on with specification etc. etc. If we perused the charge-sheet supplied to the petitioner (Annexure-P/1 in W.P. No. 62/1997), it would appear that the same is strictly in form "C" appended to the Rules with reference to sub-rule (2) of Rule 47. Therefore, the contention raised that a proper charge-sheet was not supplied and the entire inquiry vitiates on this count can not be sustained.

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(14) The next contention of learned counsel for the employee/petitioner was that the charges levelled against the petitioner were not proved. This cannot be sustained in view of the detail discussion made in Para- 12 of the judgment. As held above, after perusal of the orders passed in the domestic inquiry, and thereafter by the domestic Tribunal it would appear that the charges were proved and the findings were based on relevant evidence on record. In view of the said discussion, this argument cannot be accepted.

(15) The last contention was about the payment of full back wages to the petitioner. In light of the opinion expressed by me, on which I am going to set aside the order passed by the Board, this argument cannot be entertained, as no relief in W.P. No. 1604/1997 can be granted.

(16) For the foregoing reasons especially in Para-12 of the judgment, the W.P. No. 62/1997 is allowed. The impugned order dated 4.11.96 (Annexure-P/6 in W.P. No. 62/1997) passed by the Board of Revenue is quashed. W.P. No. 1604/1997 for modification of order dated 4.11.96 is dismissed. No order as to costs.

Sd/-
Sunil Kumar Sinha
Judge

Rao/V